



Friday  
August 23

*Awards* **DINNER**

**LUAAU**

Proprietor's Lodge



# Starting Soon!

## BERKSHIRE REALTOR® SETTLEMENT MEETING



& Multiple Listing Service



*LEARN*  
*EVALUATE*  
*COOPERATE*  
*PLAN*  
*THRIVE*  
*SHARE*  
*ENGAGE*  
*EXCEL*

- ✓ **How we got here**
- ✓ **Settlement Overview**
- ✓ **Practice Changes by 8/17**
- ✓ **Contract Revisions**
- ✓ **What's Next**





# IMPORTANT STARTING POINT



- ✓ **Anti-trust**
- ✓ **Not a lawyer**
- ✓ **Decision Making Process**
- ✓ **Preserve broker choice**
- ✓ **Not proactive**
- ✓ **Expect Change**

**Why  
are we  
here?**

# **SITZER- BURNETT CASE**

- **\$418 million over four years. (compared to litigation damages totaling \$1.78 billion)**
- **Release of liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.**
- **Resolves claims against NAR, REALTOR members, REALTOR® associations; association-owned MLSs; and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below.**
- **Berkshire MLS signed onto this settlement and agrees to abide by the new MLS rules and regulations.**

# MLSPIN V. NOSALEK

- ▶ Settlement Pending until national Sitzer-Burnett case is finalized
- ▶ Completely Different: Offers of compensation on the MLS, if any, will be made by the seller. Listing brokers and cooperating brokers will no longer split commissions.
- ▶ Agent guidance– talk to your broker.
- ▶ Broker Guidance – MAR Legal Hotline FAQs provides great information: check them out at [www.MARealtor.com](http://www.MARealtor.com)



# 10 MARKETPLACE CHANGES MUST OCCUR BY AUGUST 17<sup>TH</sup>



**But what about August 8<sup>th</sup>??**



**1.**

**Cooperative  
compensation  
established outside  
of the MLS**

**2.**

**Buyer Agreements  
used before  
providing brokerage  
services**

**1.**

# Practice Change

**NO OFFERS OF  
COMPENSATION IN MLS.**

**Anywhere OUTSIDE of the MLS is fine, with SELLER consent.**





**Listing Broker Paying Buyer Broker Compensation  
Is still ALLOWED, with Seller approval**



**Seller Paying Buyer Broker Compensation  
is still ALLOWED, with Seller agreement**



**Buyer Paying Buyer Broker Compensation  
is still ALLOWED, with Buyer agreement**



**Portion of Closing Cost Credits Used for  
Buyer Broker Compensation is still ALLOWED**



# ALLOWED: BROKER-TO- BROKER

- ✓ Allowed by NAR Settlement
- ✓ Allowed by Mortgage Lenders

Discuss with your seller all the terms that will make the sale a success for them and how they can calculate and compare offers accordingly.

## How to convey?

- In conversations
- On website, not with MLS Listing Feed
- On flyers
- Anywhere except for the MLS

## How to Bind:

- In writing only, P&S or Addendum



# Exclusive Right to Sell Agreement

# NO COMPENSATION IN MLS

**ALLOWED: Broker-to-broker** – Listing broker makes an offer of compensation to buyer's brokers with the seller's clear consent and agreement – as established in the Exclusive Right to Sell Agreement . Not binding until agreed upon in writing.

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

5. **COMPENSATION:** If within the term of this Agreement or any extension, the Property is sold or the BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the BROKER shall be due a professional fee for services rendered of  \_\_\_% of the purchase price OR  \$ \_\_\_\_\_ fixed dollar amount. Said fee shall be based on a Purchase and Sale Agreement purchase price less any closing cost credits paid by SELLER to Buyer, if any. Fees shall be paid at the time of closing and may be deducted from the amounts held by BROKER as escrow agent.

Further, from the professional fees shown above, SELLER authorizes BROKER to offer the following compensation to cooperating brokers, if applicable:  **Buyer agents:** \_\_%,  **Facilitators:** \_\_%.  **Other** offers of cooperation and/or compensation outlined in par 13. In the event that SELLER negotiates with a buyer to pay compensation to a cooperating broker that exceeds the offer made by the BROKER herewith, SELLER shall be obligated to pay the difference.







# EXCLUSIVE RIGHT TO SELL

## Change

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

5. **COMPENSATION:** If within the term of this Agreement or any extension, the Property is sold or the BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the BROKER shall be due a professional fee for services rendered of  \_\_\_% of the purchase price **OR**  \$ \_\_\_\_\_ **fixed dollar amount.** Said fee shall be based on a Purchase and Sale Agreement purchase price less any closing cost credits paid by SELLER to Buyer, if any. Fees shall be paid at the time of closing and may be deducted from the amounts held by BROKER as escrow agent.

Further, from the professional fees shown above, **SELLER authorizes** BROKER to offer the following compensation to cooperating brokers, if applicable:  **Buyer agents:** %,  **Facilitators:** %.  **Other** offers of cooperation and/or compensation outlined in par 13. **In the event that SELLER negotiates with a buyer to pay compensation to a cooperating broker that exceeds the offer made by the BROKER herewith, SELLER shall be obligated to pay the difference.**



# BROKER-TO- BROKER

## Negotiating, Timing, and the Broker-to-Broker Agreement

- ▶ The NAR Code of Ethics before touring the home (See Article 3-1).
- ▶ **Keep in mind that pursuant to the settlement practice changes, a buyer broker cannot accept compensation from any source that is more than the amount agreed to between the buyer broker and the buyer.**
- ▶ Broker-to-Broker compensation agreements between REALTORS® are arbitrable disputes under Article 17 of the Code of Ethics and arbitrable between MLS Participants pursuant to MLS Policy.

# **BROKER-TO- BROKER**

**IF SELLER SAYS  
NO, IT'S NO.**

**If a listing broker has not received permission from the seller to offer compensation from their portion of commission, the listing broker is UNABLE TO DO SO.**



## **Broker-to-Broker agreements:**

- **Memorialize the compensation agreement between brokers, in accordance with the seller's authorization to the listing broker and the buyer's agreement with the buyer broker.**
- **May be made in a separate document or purchase agreement**
- **Reduce confusion and misunderstanding of an offer of compensation.**
- **Be instructive in the event of a dispute.**



# LOOK AT MAR FORM #311 TO ESTABLISH THAT AGREEMENT



## COOPERATING COMPENSATION AGREEMENT #311

**Listing Broker** \_\_\_\_\_ is representing the owner of the real property commonly known as \_\_\_\_\_ ("hereinafter the "Property").

**Cooperating Broker** \_\_\_\_\_ is assisting (Buyer) \_\_\_\_\_ who is contemplating making an offer to purchase Property.

**Listing Broker** agrees to pay **Cooperating Broker** compensation in the amount of  \$ \_\_\_\_\_ or  \_\_\_\_\_ % of the  gross  net selling price of the Property. Said payment shall be made within \_\_\_\_\_ days of the closing date.

### Additional Provisions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The compensation stated in this Agreement supersedes any other prior offers of compensation made by Listing Broker, whether written or oral.

\_\_\_\_\_  
Listing Broker or Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Cooperating Broker or Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**BERKSHIRE COUNTY BOARD OF REALTORS®, INC.**  
**COOPERATIVE COMPENSATION AGREEMENT**

► **1. PARTIES:**

	SELLER'S PARTIES	BUYER'S PARTIES
Broker	_____	_____
Brokerage	_____	_____
Client Name	_____	_____

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

► **2. COOPERATIVE AGENT COMPENSATION:** The SELLER'S BROKER, representing the owner of real property located at \_\_\_\_\_ ("Property"), has been authorized to pay compensation in the amount of  \_\_\_\_\_ % of the purchase price OR  \$ \_\_\_\_\_ [fixed dollar amount] on behalf of the SELLER to the BROKER assisting the BUYER named above, who is contemplating making an offer to purchase Property. BUYER'S BROKER confirms that they have a contractual relationship with BUYER to assist them in the purchase of Property.

Should the BUYER'S offer be accepted by the SELLER and upon the Seller's receipt of payment of the full purchase price, the BUYER'S BROKER named herein shall be due compensation as outlined above, less any closing cost credits as indicated on the Closing Disclosure paid by the SELLER on behalf of the BUYER, if any. Said payment shall be made within \_\_\_\_\_ days of the closing date.

This compensation agreement is only valid as long as the SELLER'S BROKER has an Exclusive Right to Sell Agreement in force and able to collect the compensation due to them as the SELLER'S BROKER.

When this agreement is executed, it becomes a binding agreement between the brokers and subject to the rules of arbitration, as agreed upon by REALTOR members in the National Association of REALTORS® Code of Ethics and Arbitration Manual, Article 17. In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall attempt to mediate the dispute. If the dispute is not resolved through mediation, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter. The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and any resulting agreement or award.

**Berkshire form  
Coming soon**

- **Additional Disclosure for Existing Exclusive Right to Buy** – If you were an early adopter and have been getting buyer clients to sign the standard Berkshire County Exclusive Right to Buy agreement, this addendum ensures you comply with the settlement. There is no need to get a new contract signed after August 17<sup>th</sup> if you are using this addendum. This addendum is not needed if you sign a new ‘Buyer-Broker Representation Agreement’ released 7/24 moving forward.

- ▶ **Additional Disclosure for Existing Exclusive Right to Sell** – If you have existing seller clients that signed a standard Berkshire County Exclusive Right to Sell agreement before 7/24 without the ‘ALL COMPENSATION IS NEGOTIABLE’ statements included, this addendum complies with the settlement. If you get this addendum signed, then you do not need to get a new contract signed after August 17<sup>th</sup> to comply. This addendum is not needed if your clients sign a new ‘Exclusive Right to Sell Agreement’ dated 7/24 or later moving forward.

## ***BERKSHIRE STANDARD CONTRACT CHANGES OVERVIEW***



**BROKER COMPENSATION IS FULLY  
NEGOTIABLE AND NOT SET BY LAW.**

Please note that the BROKER may not receive compensation from any source that EXCEEDS the broker's fee specified in the Buyer Representation Agreement, as previously agreed.

On \_\_\_\_\_ date I, \_\_\_\_\_  
for the buyer, have provided this disclosure notice to supplement the existing Exclus  
Contract executed on \_\_\_\_\_ between the parties shown above.

\_\_\_\_\_  
**BUYER:** **DATE** **AUTHORIZED BROKER**

\_\_\_\_\_  
**BUYER:** **DATE** **For:**  
**BROKERAGE NAME**

**BROKER COMPENSATION IS FULLY NEGOTIABLE  
AND NOT SET BY LAW.**

The Exclusive Right to Sell Agreement executed on \_\_\_\_\_ between SELLER and  
BROKER instructed the listing BROKER to make an offer of cooperative compensation to buyer's  
brokers or facilitators in the sale of the above-named property. This disclosure notice is to make it clear  
that this offer will be conveyed, as instructed by the seller in the Exclusive Right to Sell agreement, in  
conversation and agreements made outside of an MLS.

I, \_\_\_\_\_ AGENT for the seller, have provided this  
disclosure notice to supplement the existing Exclusive Right to Sell Agreement between the parties  
shown above on \_\_\_\_\_ date.

\_\_\_\_\_  
**SELLER:** **DATE** **AUTHORIZED BROKER** **DATE**

\_\_\_\_\_  
**SELLER:** **DATE** **For:**  
**BROKERAGE NAME**

# BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.

The Exclusive Right to Sell Agreement executed on \_\_\_\_\_ between SELLER and BROKER instructed the listing BROKER to make an offer of cooperative compensation to buyer's brokers or facilitators in the sale of the above-named property. This disclosure notice is to make it clear that this offer will be conveyed, as instructed by the seller in the Exclusive Right to Sell agreement, in conversation and agreements made outside of an MLS.

I, \_\_\_\_\_ AGENT for the seller, have provided this disclosure notice to supplement the existing Exclusive Right to Sell Agreement between the parties shown above on \_\_\_\_\_ date.

\_\_\_\_\_  
SELLER:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
AUTHORIZED BROKER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SELLER:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
For:  
BROKERAGE NAME





# CAN BUYERS AND BUYER BROKERS RELY ON AN OFFER OF COMPENSATION THAT WAS ON AN MLS PRIOR TO THE EFFECTIVE DATE OF THE MLS POLICY CHANGES?

If the **sales contract is executed before the MLS policy change**, the buyer broker should be able to rely upon the offer of compensation even if closing occurs after the date of the policy change.

But if **a sales contract is not executed before the date** the participant's MLS implements the policy changes, the offer on an MLS will not be valid and buyers and buyer brokers may wish to protect themselves in writing with the listing broker or seller through a broker agreement or by including the offer of compensation in the sales contract.

# PURCHASE & SALE

- **20. COOPERATIVE AGENT COMPENSATION:** Upon transfer of title and SELLER'S receipt of payment of the full purchase price, the BUYER'S broker named herein shall be due compensation as outlined below, less any closing cost credits as indicated on the Closing Disclosure paid by the SELLER on behalf of the BUYER, if any. The compensation stated in this Agreement supersedes any other prior offers of compensation made by SELLER'S BROKER, whether written or oral. SELLER and BUYER agree [check all that apply]:

## **BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

- OPTION A BUYER's broker compensation of  \_\_\_\_\_ % of the purchase price, OR  \$ \_\_\_\_\_ [fixed dollar amount] shall be paid by the SELLER'S broker on behalf of the SELLER.
- OPTION B BUYER's broker compensation of  \_\_\_\_\_ % of the purchase price, OR  \$ \_\_\_\_\_ [fixed dollar amount] shall be paid out of the purchase funds by the SELLER at the time of transfer of title.
- OPTION C Other terms as outlined in paragraph 35. Special Conditions / Addenda
- OPTION D There is no compensation due to be paid to a BUYER's broker as part of this contract.

**ALLOWED:  
SELLER-TO-  
BROKER**

- ✓ Allowed by NAR Settlement
- ✓ Allowed by Mortgage Lenders

Discuss with your seller all the terms that will make the sale a success for them and how they can calculate and compare offers accordingly.

**How to convey?**

- In conversations
- On website, not with MLS Listing Feed
- On flyers
- Anywhere except for the MLS

**How to Bind:**

- In writing only, P&S or Addendum



## **ALLOWED: Seller Paying for Buyer ok:**

- ▶ If sellers don't agree to a listing broker offering of compensation from their portion of the selling fee, make sure they understand it could be a term in buyer offers since many buyers need this payment come from transaction proceeds for financing purposes.

# **NO COMPENSATION IN MLS**



**ALLOWED:  
BUYER  
PAYING  
BUYER'S  
BROKER**

- ✓ Allowed by NAR Settlement
- ✓ Allowed by Mortgage Lenders

### How to convey?

- In Buyer Agreement

### How to Bind:

- In writing only

**Buyers have always been able to hire and pay their own agent. It does present a challenge for many buyers who have down payment requirements to produce an additional payment separate from the transaction.**



# BUYER AGREEMENT

## **BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

▶ **8. BROKER'S FEE:** BUYER agrees to pay BROKER (select one or more):

- (a) Compensation: The parties agree that a fee equal to  \_\_\_\_\_% of the purchase price, OR  \$ \_\_\_\_\_ fixed dollar amount shall be due BROKER upon successful completion of this Contract or in the event that, within \_\_\_\_\_ days following the term of this Contract, BUYER or any person acting on behalf of BUYER purchases, rents or otherwise acquires an interest in real property about which BUYER becomes aware during the term of this Contract, including any extension.

The BUYER directs BROKER to first seek compensation from  the listing broker and/or  from the seller in a transaction agreement. If obtained, such amount shall be credited to the amount of the Compensation. If such fee cannot be obtained in whole or in part from the transaction, BUYER agrees to pay BROKER the compensation at the time for closing of the transaction. The transaction agreement may consist of an accepted offer, purchase and sale agreement, option, deed, exchange agreement, lease or similar instrument. The BROKER shall be entitled to Compensation in the event of any default by BUYER.

- (b) Retainer: BUYER shall pay BROKER a retainer in the amount of \_\_\_\_\_ upon signing this Contract as compensation for professional services. Such retainer is non-refundable and  **shall** /  **shall not** be credited against any Compensation.
- (c) Hourly: BUYER shall pay BROKER at the rate of \$ \_\_\_\_\_ per hour for time expended by BROKER pursuant to this Contract. Bills shall be due and payable upon receipt by BUYER.
- (d) Other: \_\_\_\_\_

**BROKER MAY NOT RECEIVE COMPENSATION FROM ANY SOURCE  
THAT EXCEEDS THE BROKER'S FEE SPECIFIED IN SECTION 8.**

## REMEMBER:

- **Agreement in Writing: Without a binding offer of compensation in the MLS going forward, compensation needs to be negotiated and secured appropriately, in writing, by the parties.**

*In Practice: The Compensation Agreement and the new Purchase and Sale Agreement can now be used to present a full picture of all the financial terms of the agreement with transparency and a written contractual agreement by all parties. Remember a fully informed client, both buyer and seller, is the ultimate goal.*

**2.**

# Practice Change

**WE CAN'T BREAK THE RULES  
AND NEITHER CAN YOU**



**NEW**

# **REVISED BROKER DATA LICENSING AGREEMENTS!**



Type	Policy Violation	Fine
<b>Buyer Agreements</b>	Failure to secure Buyer Agreement with buyer prior to showing listed property	<ul style="list-style-type: none"> <li>• \$500, First Offense</li> <li>• Second offenses will be assessed after a hearing with the MLS Board, the Participant, and the offending user; per Section 7 of the Rules and Regulations which could result in a minimum fine of \$5,000 up to a maximum of \$15,000 and/or suspension from MLS for a minimum of 30 days and up to a maximum of one year)</li> <li>• Subsequent offenses are handled according to Section 7 of the Rules and Regulations.</li> </ul>
<b>Settlement Compliance</b>	Inserting compensation, bonuses and/or making any reference on method of obtaining commission into any field or document in the MLS database accessible to other members.	<ul style="list-style-type: none"> <li>• \$500, First Offense</li> <li>• Second offenses will be assessed after a hearing with the MLS Board, the Participant, and the offending user; per Section 7 of the Rules and Regulations which could result in a minimum fine of \$5,000 up to a maximum of \$15,000 and/or suspension from MLS for a minimum of 30 days and up to a maximum of one year)</li> <li>• Subsequent offenses are handled according to Section 7 of the Rules and Regulations.</li> </ul>
<b>Use of MLS data for compensation purposes.</b>	Electronic Display of Berkshire MLS Data comingled with any compensation offers or transmission of MLS data without authority or authorization.	<ul style="list-style-type: none"> <li>• ALL Offenses include termination of Participant's MLS service and data feeds for up to three years, also, refer to Subscriber Agreement violation penalties.</li> <li>• Subsequent Offenses Termination of Participant's MLS service up to 3 years*</li> </ul>

**3.**

# Practice Change

## MANDATED BUYER BROKER AGREEMENTS.

**All participants working with a buyer must have a written agreement before touring a listing.**

# BUYER BROKER AGREEMENTS

## That agreement must describe:

- **Broker's Services**
- **Broker's Compensation Amount**
  - the amount must be objectively ascertainable and not open-ended,
- **Broker may not receive compensation from any source that exceeds the amount in the agreement.**
- **Compensation is negotiable and not set by law**
- **Define how and methods of payment and allow the buyer to direct their agent on pursuit of compensation**

# BUYER CONTRACT TRIGGER

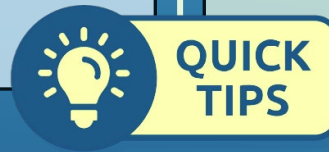
Simply marketing your services or speaking to a buyer about creating a relationship does not trigger the need for an agreement. But, as soon as you begin to work with a buyer and provide any brokerage services,

- *identifying potential properties*
- *arranging for the buyer to tour a property*
- *performing or facilitating negotiations on behalf of the buyer*
- *presenting offers by the buyer*
- *counseling on financing and the homebuying process or other services you provide for the buyer*

# Buyer Contracts?

▶ **Note: Listing agents, speaking with a buyer at an open house or showing an unrepresented buyer a house that you have listed is NOT considered working with the buyer. You are working only as an agent of the**

▶ **Note: Dual agents DO work with both the buyer (and the seller) and a contract would be required.**



**Make sure your agents know what service your firm and they as agents of your firm offer to:**

- **Unrepresented Buyers**
- **Buyers in Dual Agency**
  - **Buyer Clients**





& Multiple Listing Service



# Exclusive Buyer Broker Representation Agreement

**BERKSHIRE COUNTY BOARD OF REALTORS® , INC.**  
**EXCLUSIVE BUYER / BROKER REPRESENTATION AGREEMENT**

▶ **1. PARTIES:** Buyer(s) Name(s) \_\_\_\_\_ (“BUYER”)  
Mailing Address: \_\_\_\_\_  
Broker / Corporation \_\_\_\_\_ (“BROKER”)

▶ **2. EXCLUSIVE RIGHT TO BUY:** BUYER grants to BROKER the exclusive right to locate or procure real property acceptable for purchase/rental by BUYER in \_\_\_\_\_ (*identify geographic area*) for the period to begin on the date of the buyer’s signature and end on \_\_\_ / \_\_\_ / \_\_\_, unless extended in writing by all parties to this agreement. BUYER agrees to refer each potentially acceptable property to BROKER during the term of this Contract and agrees to notify all other real estate agents who communicate with BUYER of BROKER’S exclusive relationship with BUYER. BUYER shall have sole authority to decide whether a property is acceptable for purchase.

▶ **3. LICENSEE-CONSUMER RELATIONSHIP DISCLOSURE:** BUYER acknowledges that they have been provided with a completed copy of the ‘Massachusetts Mandatory Licensee-Consumer Relationship Disclosure’ form. BUYER further acknowledges that BROKER represents the BUYER as a Buyer’s Agent. If the BROKER represents a SELLER of a property the buyer is interested in as a Seller’s Agent, the BUYER authorizes the BROKER may  **Serve as a Disclosed Dual Agent** /  **Appoint Designated Agent(s)**. The applicable ‘Consent Addendum’ attached is incorporated herein by reference.

BUYER understands that BROKER, or any agent associated with BROKER, may represent other buyers, and agrees that it will not constitute a breach of duty for the BUYER’s agent to introduce another prospective buyer to a property in which BUYER may be interested or to assist another buyer with a purchase. BROKER shall maintain confidentiality of material information for each buyer.

**4. BROKER'S DUTIES and SERVICES:** BROKER agrees to:

- a) Use reasonable efforts to locate a property for BUYER;
- b) Provide the BUYER with any requested market data to assist in the determination of offering amount;
- c) Arrange showings, give advice on practices and procedures, arrange inspections requested by the BUYER and coordinate activities throughout the process;
- d) Negotiate terms and conditions of a contract acceptable to the BUYER, which may consist of an offer, purchase and sale agreement, option, deed, exchange agreement, lease or similar instrument;
- e) Present all written offers forthwith to the listing broker or seller. BUYER is advised that sellers or sellers' representatives are not required to treat the existence, terms or conditions of an offer as confidential, unless a confidentiality agreement has been made with the seller before submission of an offer;
- f) Disclose any known material facts that might influence a buyer's decision to purchase a property pursuant to Massachusetts Consumer Protection Act, Chapter 93A;
- g) Adhere to state and federal Fair Housing laws in the search for real property
- h) Preserve confidential material and financial information received from the BUYER;

**5. BUYER'S DUTIES:** BUYER agrees to:

- a) Work exclusively with BROKER in the geographic area identified during the term of this Contract to locate property for purchase/rent.
- b) Cooperate with BROKER by providing appropriate personal and financial information.
- c) Provide any lender's notice of pre-qualification or pre-approval to BROKER within seven (7) days of receipt.
- d) Inform BROKER of any interest in the purchase/rental of real property of which BUYER previously learned.
- e) BROKER shall make appointments to view property, or BUYER will get advance approval from the BROKER to make their own appointment to view property.
- f) Advise all other brokers of BUYER'S relationship with BROKER, including at open houses.

**6. REPRESENTATIONS:** BUYER represents that BUYER is not subject to any agreement with any other broker in the geographic areas identified in paragraph 2, including any protection period.

BUYER agrees that BROKER'S services do not constitute a guarantee or warranty concerning any property. BUYER agrees that BROKER has not been retained as an attorney, inspector, home inspector, pest/termite inspector, septic inspector, surveyor or to determine the condition of the real property and has not been retained to provide legal advice, to perform a title search or to act as a mortgage broker. BROKER recommends that an attorney and other professionals be hired for such services as BUYER deems appropriate.

BUYER understands that BUYER has the duty to exercise due diligence for BUYER'S own protection, including the duty to investigate any information of importance to the BUYER. BUYER agrees that BROKER shall have no duty to disclose any condition outside the boundaries of the property being considered.

**7. DISCLOSURE OF IDENTITY/OTHER BROKERS/OTHER POTENTIAL BUYERS:** BROKER is authorized to disclose BUYER'S identity. BROKER is authorized to cooperate with and pay other brokers in connection with the performance of services.

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**



## **BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

▶ **8. BROKER'S FEE:** BUYER agrees to pay BROKER (*select one or more*):

- (a) Compensation: The parties agree that a fee equal to  \_\_\_\_\_% of the purchase price, OR  \$ \_\_\_\_\_ **fixed dollar amount** shall be due BROKER upon successful completion of this Contract or in the event that, within \_\_\_\_\_ days following the term of this Contract, BUYER or any person acting on behalf of BUYER purchases, rents or otherwise acquires an interest in real property about which BUYER becomes aware during the term of this Contract, including any extension.

The BUYER directs BROKER to first seek compensation from  the listing broker and/or  from the seller in a transaction agreement. If obtained, such amount shall be credited to the amount of the Compensation. If such fee cannot be obtained in whole or in part from the transaction, BUYER agrees to pay BROKER the compensation at the time for closing of the transaction. The transaction agreement may consist of an accepted offer, purchase and sale agreement, option, deed, exchange agreement, lease or similar instrument. The BROKER shall be entitled to Compensation in the event of any default by BUYER.

- (b) Retainer: BUYER shall pay BROKER a retainer in the amount of \_\_\_\_\_ upon signing this Contract as compensation for professional services. Such retainer is non-refundable and  **shall** /  **shall not** be credited against any Compensation.
- (c) Hourly: BUYER shall pay BROKER at the rate of \$ \_\_\_\_\_ per hour for time expended by BROKER pursuant to this Contract. Bills shall be due and payable upon receipt by BUYER.
- (d) Other: \_\_\_\_\_

**BROKER MAY NOT RECEIVE COMPENSATION FROM ANY SOURCE  
THAT EXCEEDS THE BROKER'S FEE SPECIFIED IN SECTION 8.**



**9. PROTECTION PERIOD:** BUYER shall not be obligated, however, to pay such compensation, if a valid buyer representation agreement is entered after the expiration of this agreement and during the term of the protection period defined in paragraph 8a, with another licensed real estate BROKER and a sale, rental, transfer or exchange of a property.

**10. NON-DISCRIMINATION:** BROKER will search for real property without reference to any person's race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, and without reference to whether a person intends to occupy the property with one or more minor children or is a recipient of public assistance.

**11. BINDING CONTRACT:** This contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, personal representatives, legatees, successors, and assigns (collectively

"successors"); provided, however, that BROKER shall not assign this contract without BUYER's prior written consent.

- a) **EXTENSIONS:** In the event this Contract is extended, all of the terms and conditions applicable during the initial term of the contract shall apply with equal force and effect during such extension, except as otherwise agreed in writing.
- b) **MODIFICATION:** No modification, amendment or deletion affecting this contract shall be effective unless in writing and signed by all parties.
- c) **COLLECTION OF FEES:** If BUYER breaches this contract and suit is brought by BROKER to recover fees and a judgment is awarded in favor of BROKER, BROKER shall be entitled to recover from BUYER all expenses, including reasonable attorneys' fees, incurred as a result of BUYER's breach. BUYER and BROKER agree that any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS").
- d) **CLAIMS:** Should either party file a claim for violation of Massachusetts General Laws Chapter 93A, the prevailing party (including any agent of the BROKER) shall be entitled to recover reasonable attorneys' fees and costs, but no fees and costs shall be recovered in the event that a settlement was made in advance of the suit, but rejected, and the court or arbitrator determines that the rejected tender was reasonable in relationship to the injury actually suffered.
- e) **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

**12. ADDITIONAL TERMS**  See attached addendum(s) incorporated here by reference.

# BUYER AGREEMENT: WHO SEES IT?

- It is the MLS's job to enforce the regulation that a buyer agreement be executed before a showing, not a competing firm.
- Buyer Agreements have confidential client information, like your agreed upon commission and brokerage strategy for assisting buyers.
- Regardless, only the broker should decide about sharing any document outside of the firm.
- While we say you can share an agency disclosure as a courtesy, **sharing a buyer agreement is NOT recommended.**

**Tell  
your  
agents**



# Purchase and Sale Agreement



## **New Wire Transfer Caution – Please POINT IT OUT to your CLIENTS!**

**IMPORTANT NOTICE: Never trust wiring instructions sent via email. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.**

**Reordered Like Terms; Inspection / Physical Terms, Legal Terms, etc..**



# P&S COMPENSATION CLAUSE

- **20. COOPERATIVE AGENT COMPENSATION:** Upon transfer of title and SELLER'S receipt of payment of the full purchase price, the BUYER'S broker named herein shall be due compensation as outlined below, less any closing cost credits as indicated on the Closing Disclosure paid by the SELLER on behalf of the BUYER, if any. The compensation stated in this Agreement supersedes any other prior offers of compensation made by SELLER'S BROKER, whether written or oral. SELLER and BUYER agree [check all that apply]:

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

- OPTION A BUYER's broker compensation of  \_\_\_\_\_ % of the purchase price OR  \$ \_\_\_\_\_ [fixed dollar amount] shall be paid by the SELLER'S broker on behalf of the SELLER.
- OPTION B BUYER's broker compensation of  \_\_\_\_\_ % of the purchase price OR  \$ \_\_\_\_\_ [fixed dollar amount] shall be paid out of the purchase funds by the SELLER at the time of transfer of title.
- OPTION C Other terms as outlined in paragraph 35. Special Conditions / Addenda
- OPTION D There is no compensation due to be paid to a BUYER's broker as part of this contract.





# MAR FORMS

## **Other Contracts:**

Some brokers have adopted their own agreements or prefer different forms, so always defer and check the agreements your broker want you to be using. MAR has also updated their forms and they have also sent revisions to forms providers. Remember that they deal with markets that primarily start with an Offer to Purchase and lead to an attorney drafted Purchase Agreement, unlike our direct route. Given the changes make sure you learn when and how these forms can be used by the MAR legal hotline or your own counsel. That said, they took input from REALTORS across the state so you're welcome to use them as well. MAR forms include:

[Contract to Purchase Real Estate \(#501\)](#)

[Standard Purchase & Sale Agreement \(#503\)](#)

[Exclusive Buyer Agency Agreement \(#701\)](#)

[Addendum – Broker Offer of Compensation \(#709\)](#)

[Exclusive Right to Sell Listing Agreement \(#709\)](#)

[Disclosure – Existing Exclusive Buyer Agency Agreement](#)

[Disclosure – Existing Exclusive Right to Sell Listing Agreement](#)

**4.**

# Practice Change

**NO ADVERTISING SERVICES AS FREE.**

**MLSs must prohibit participants and subscribers from representing their services are free.**

# Articulate your value

Communicate the benefits that you generate for your customers clearly and precisely.

- *Why would people choose you?*
- *What's in it for your customers?*



5.

# Practice Change

## NO FILTERING

The settlement prohibits you from filtering out listings based on the existence or level of compensation offered to the broker assisting the buyer.





6.

# Practice Change

## CONCESSIONS **IN MLS**

Sellers may offer buyer concessions on the MLS (e.g., for buyer closing costs), so long as they are not limited or stated for cooperating broker compensation.



# CONCESSION

Concession is a Seller Payment of funds.

- Can be used to satisfy the debt owed by the buyer to their buyer's agent
- Can be used as a credit for closing costs.

*Be careful – We have structured the P&S to be transparent and clear to adhere to the ideal that brought this lawsuit settlement to begin with and moving away from that with less transparency about your commission can be problematic.*



**FANNIE MAE, FREDDIE MAC, AND THE FHA SPECIFY LIMITS ON HOW MUCH A SELLER OR BROKER CAN CONTRIBUTE TO THE BUYER TO PAY FOR SERVICES TYPICALLY PAID BY THE BUYER. THESE PAYMENTS ARE CALLED INTERESTED PARTY CONTRIBUTIONS (IPCS).**

**HOW YOU WORD IT IS IMPORTANT, AND WE RECOMMEND USING THE PROVIDED CONTRACT LANGUAGE for buyer compensation agreements – otherwise seek advice from legal counsel (MAR hotline is great) or your lender for appropriate wording if not using the standard language in the new agreements.**





# Housekeeping Issues

- Message Board Removal
- No Use Of MLS Email
- Limited Word Usage To Be Added
- Enforcement In Progress
- Policy In Place for Violations

**Update form Templates in Zip and Dotloop!**

**Fund Allocation:**

Purchase Price:	\$
Less Closing Cost Credits:	\$
<b>Purchase Price Balance:</b>	\$
<b>BROKER COMPENSATION WAS FULLY NEGOTIATED AND NOT SET BY LAW.</b>	
Compensation Owed to Seller's Broker, per seller agreement	\$
<input type="checkbox"/> Of this, Buyer's broker compensation will be paid by the SELLER'S broker on behalf of the SELLER per the purchase agreement or addendum.	\$
Seller Expenses Paid by Seller's Broker, if any:	
	+\$
	+\$
	+\$
Less Deposits Held in Escrow:	-\$
<b>Final Balance Due to Seller's Broker</b>	\$
Seller Broker's Commission Check Written To:	

Alternatively:

<input type="checkbox"/> BUYER's broker compensation to be paid directly out of the purchase funds by the SELLER at the time of transfer of title.	\$
Buyer Broker's Commission Check Written To:	

Balance of Escrow Returned to Seller(s):  check mailed or  check delivered at closing.

Balance of Escrow Check Written To:
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Notes: \_\_\_\_\_

# COMPENSATION STATEMENT FOR CLOSING DISCLOSURE

► *Just a tool / resource for you. Lender Legal meeting might provide feedback as well*





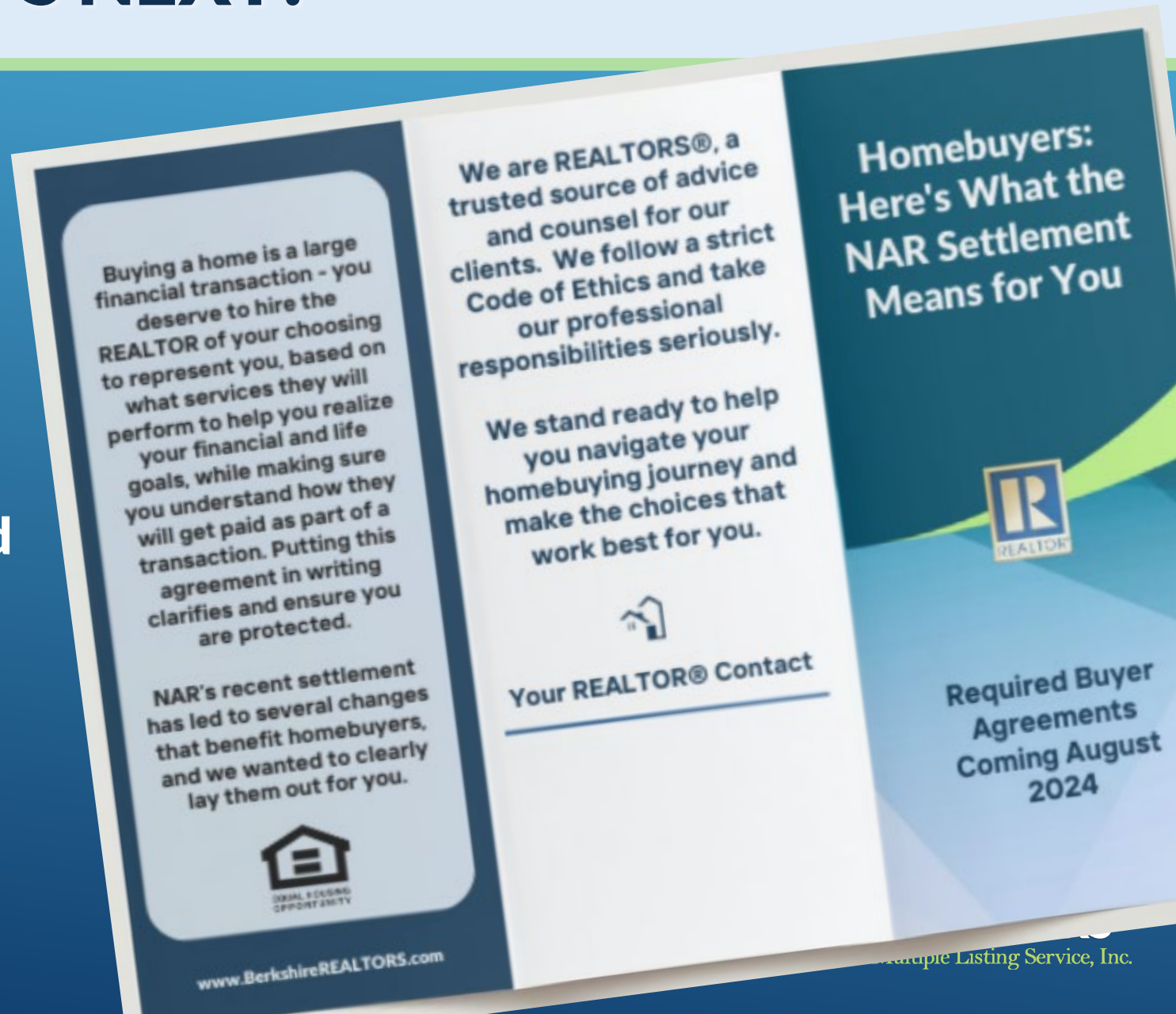
**TYPE?**

These rules do  
**NOT** apply to  
**commercial**  
listings



# WHAT'S NEXT?

- Contracts In All Platforms
- Video Overview to Share
- Trifold Brochure for Buyers and Sellers
- Postcards Out
- Other?



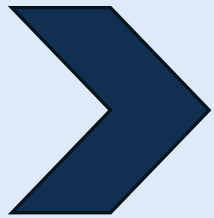




**ONE THING  
WE ALL  
AGREE...**



# WE'RE HERE TO HELP



Sandy Carroll, CEO  
413-442-8049  
Sandy@BerkshireRealtors.org



& Multiple Listing Service



**PRACTICE CHANGES BY AUGUST 17**



In full: [Facts.Realtor](https://facts.realtor)

QUESTIONS



??

*Thank You!*

??

THAT'S WHO WE 

 **Berkshire REALTORS**  
And Multiple Listing Service, Inc.